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Administrative Justice and Conclusionary Findings

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ADMINISTRATIVE JUSTICE AND CONCLUSIONARY FINDINGS

I. INTRODUCTION

In Nebraska, as well as in other jurisdictions, a large segment of the economy is regulated and controlled by administrative agencies. It is, therefore, very important that the action taken by these administrative agencies be fair and just. Nebraska, however, does not have a code of standard procedures for administrative agencies, and it is submitted that inconsistency and injustice have resulted from this deficiency.[1] The purpose of this article is to deal extensively with one particular administrative problem in Nebraska and pose a possible solution. It is suggested that this problem may be illustrative of shortcomings that may exist in other state administrative agencies which are similarly structured.

The scope of this article is limited to the activities of the Nebraska State Railway Commission (hereinafter referred to as the "commission").[2] The commission handles the regulation of all common carriers in the state, but the regulation of motor carriers constitutes the bulk of its activity. The discussion of procedural shortcomings in this article is limited to those which stem from the control the commission exercises over motor carriers.

The Nebraska Constitution[3] gives the commission wide discretionary power over matters within its control.[4] This discretion

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[1] The need for such a code was recognized in Harding, *Practice and Procedure Before the Nebraska State Railway Commission*, 37 NEB. L. REV. 486 (1958). "The Administrative Law Section has given consideration to a State Administrative Procedure Act. The need for such an Act is imperative. Its enactment would guarantee to all a code of standard procedures applicable to all the various administrative tribunals." *Id.* at 500.

[2] Two articles which are relevant to this discussion are Overcash, *Practice and Procedure Before the Nebraska State Railway Commission*, 28 NEB. L. REV. 242 (1949), which presents a comprehensive treatment of the jurisdiction and functions of the commission, and Harding, *Practice and Procedure Before the Nebraska State Railway Commission*, 37 NEB. L. REV. 486 (1958), which discusses some of the problems encountered in the presentation of the more common proceedings before the commission.

[3] NEB. CONST. art. IV, § 20, provides in part: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision."

[4] See Lincoln Traction Co. v. City of Lincoln, 103 Neb. 229, 171 N.W. 192 (1919), holding that the constitutional power conferred upon the com-

may properly be limited by the legislature through specific legislation[5] and the legislature has in fact passed a number of statutes limiting the commission's power.[6] The delegation of power in the constitution allows the commission to perform legislative, executive, and judicial functions in controlling the activities of common carriers.[7] In reviewing a final ruling or order of the commission, the Nebraska Supreme Court has limited itself to consideration of two aspects: whether the commission has acted within its jurisdiction and whether the commission has acted arbitrarily or unreasonably.[8] Considering the broad powers of the commission, the court must be able to effectively evaluate the actions of the commission within these bounds.

What, then, does the court have available to guide it in reviewing decisions of the commission? When the commission makes a final determination in a matter concerning a motor carrier, the decision is almost invariably made in the form of a one or two sentence conclusionary finding. This is all that the carrier has to work with in conforming his activities to the direction of the commission and if the carrier wants to appeal this determination to the Nebraska Supreme Court, the court has little more than this as a record to refer to in reviewing the action of the commission. In addition, changes in the membership of the commission may result in policy inconsistencies and changes because the new commissioners will have no way of knowing the reasons behind prior decisions.

At present there is no requirement that the commission report any findings of fact or reasons for its conclusion in a particular case. The commission has taken the initiative in clarifying some aspects of its activities,[9] but at present all that is usually reported in a final decision of the commission is its conclusion. The following sections of this article are designed to show the ineffectiveness

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mission gives it the same general control and power in regulation of rates and services that the people of the state could exercise.

[5] Union Transfer Co. v. Bee Line Motor Freight, 150 Neb. 280, 34 N.W.2d 363 (1948).

[6] NEB. REV. STAT. §§ 74-101 to 75-801 (Reissue 1966).

[7] Overcash, *Practice and Procedure Before the Nebraska State Railway Commission*, 28 NEB. L. REV. 242, 244 (1949).

[8] Publix Cars, Inc. v. Yellow Cab & Baggage Co., 130 Neb. 401, 265 N.W. 234 (1936); Central Bridge & Constr. Co. v. Chicago & N.W. Ry., 128 Neb. 779, 260 N.W. 172 (1935).

[9] The rules and regulations of the Nebraska State Railway Commission established procedural formalities which the parties or their lawyers must comply with in actions before the commission as well as some specific regulations for each type of carrier.

of judicial review under the present procedural practices of the commission. This will be illustrated by an analysis of some of the cases handled by the court which deal with the phrase "occasionally to and from various points within the State of Nebraska at large."[10]

II. JUDICIAL REVIEW OF CONCLUSIONARY FINDNGS

In 1937 the Nebraska Legislature passed an act regulating intrastate motor carriers which was to be administered and enforced by the State Railway Commission.[11] The act made it unlawful for any motor carrier subject to the act to carry on intrastate operations unless it had a certificate of public convenience and necessity authorizing those operations.[12] The commission was authorized to issue this certificate without proof of public convenience and necessity to all carriers that were in actual bona fide operation on April 1, 1936, and had so operated since that time.[13] This is the so-called "grandfather" clause of the act.[14]

In issuing a certificate under the "grandfather" clause, the commission held hearings in which truckers described their prior operations and a certificate was issued granting corresponding authority. Most of the carriers did the bulk of their hauling between certain specific points, but occasionally they would travel to and from other points throughout the state when busines would so demand. When the commission began issuing these certificates, it described each carrier's operation in almost the very words used by the applicant in describing his route. Due to the small amount of time allowed for the procedure and because it was easier for the examiners to use similar language to describe all operations of a similar nature carried on by different carriers, certain phrases came to be "terms of art"—descriptive of certain types of activities. As was noted above,[15] the words of the certificate were not as crucial

10 This phrase was taken from an order by the Nebraska State Railway Commission on the application of C. H. Kleinholz, which was made and entered at Lincoln, Nebraska on February 24, 1938. A mimeographed copy of the order was obtained by the author from the Nebraska State Railway Commission.

11 Neb. Laws c. 142, p. 526 (1937).

12 Neb. Laws c. 142, § 7 (1937).

13 *Id.*

14 Theoretically, the motor carrier who obtained a certificate under this clause was given the authority to carry on the same activities as he had been before the issuance of the certificate. The measure of his future authority was not the wording of the certificate but the type of motor carrier activity that he was carrying on during the stipulated period of time.

15 See *supra* note 12.

in determining the carrier's authority as were the actual activities carried on by the carrier at the time of issuance of his certificate under the "grandfather" clause. A literal interpretation of the meaning of the words of authority under a "grandfather" certificate could, if construed differently from the carrier's original activities, result in an unwarranted restriction or expansion of a carrier's granted authority.[16]

Interpretation of authority under a certificate occurs after the commission is called on to determine the propriety of operations under this phrase.[17] An examiner for the commission first holds a hearing and a decision is made by this examiner. In most cases, this decision is based on "whether or not his [the carrier's] operations are within or without the authority of his certificate."[18] After this hearing is completed, an unsatisfied carrier can ask the board of commissioners to review the determination of the examiner. They review the report of the examiner and rule on its propriety in a proceeding much like a court review. The ruling or decision by the commission on the point is given in the form of a written conclusion. This conclusionary finding contains no finding of the facts on which the ruling was based, nor does it include the reasoning on which the commission based its conclusion. Other than the short written conclusion which is given to the carrier, the decisions and orders of the commission are not codified or reported in any way.[19] After the final order of the commission is rendered, the unsatisfied carrier may ask for review of this determination by the Nebraska Supreme Court.

As was noted above,[20] the court reviews the commission's orders only to determine whether they have acted within the scope

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16 An example of the handling of one of these phrases by the court will be shown *infra*.

17 The commission may be called on to interpret the certificates on a number of occasions: (1) if there is a complaint by a competing carrier; (2) when a carrier wants to transfer a certificate; (3) when a carrier wants to extend his certificate; and (4) when there is an order for clarification of the certificate. In all of these instances the commission will hold a hearing in which other carriers are notified and may present their viewpoint or reasons why the commission should or should not grant what is asked by the carrier.

18 Kassebaum v. Nebraska State Ry. Comm'n, 142 Neb. 645, 650, 7 N.W.2d 464, 468 (1943).

19 Harding, *Practice and Procedure Before the Nebraska State Railway Commission*, 37 NEB. L. REV. 486, 487 (1958).

20 See Publix Cars, Inc. v. Yellow Cab & Baggage Co., 130 Neb. 401, 265 N.W. 234 (1938); Central Bridge & Constr. Co., 128 Neb. 779, 260 N.W. 172 (1935).

of their jurisdiction or whether they acted arbitrarily or unreasonably. It is hard to see how the court can effectively determine whether a ruling of the commission is arbitrary or unreasonable if they have no more to go by than the bald conclusion of the commission.[21] It is submitted that it is unwise and unrealistic for the court to attempt to review the actions of the commission with no more than this to guide them.

Since the authority granted under the "grandfather" provisions of the 1937 act was limited by carrier activity prior to the issuance of these certificates,[22] proper control of the carrier's rights under these certificates should flow from an analysis of these activities. The phrases in the certificates issued under the "grandfather" clause of the 1937 act became terms of art when used by the commission to describe the activities of the carriers. In one sense the words were fixed as to the meaning attached to them by the carriers and the commission at the time of issuance of a "grandfather" certificate. But in another sense, these words were inadequate to convey an accurate description of the activities of each carrier's unique operation. A court could be led into believing that the words of authority in a certificate were to be interpreted by using conventional tools of contract interpretation. Without the benefit of the esoteric meanings attached to these words by those in the motor carrier business and without cognizance of the significance of carrier activity before the issuance of the certificate, the court errs in substituting tools of language interpretation designed for other contexts. With nothing more than a conclusion of the commission to guide them, it is possible that the court could hand down a ruling which would take away part of the authority granted by the certificate or, on the other hand, the court could add to the authority given and thus diminish the control the commission has over the carrier.

Just such a situation is presented in *Kassebaum v. Nebraska State Ry. Comm'n.*[23] Here the carrier had obtained a certificate under the "grandfather" clause which provided that he was to have "irregular route" authority. The commission issued a conclusion that the carrier was operating outside his authority because he was doing "regular route" business. The carrier appealed and

[21] If the case involved a certificate issued under the "grandfather" clause, it is possible that the court could review the original hearing held by the commission in order to determine whether the commission acted unreasonably. However, the only records of these hearings is in shorthand which is seldom transcribed and is usually poorly catalogued and filed, so in many cases it is impossible to find these records.

[22] See *supra* note 12.

[23] 142 Neb. 645, 7 N.W.2d 464 (1943).

the supreme court reversed. The court held that the commission was not granted the authority to classify the carrier under the 1937 act and hence the only determination it could make was whether his certificate authorized the type of operation he was carrying on. The court felt that the words "irregular routes" involved only the way taken and not the times traveled: "Certainly the term 'irregular routes' cannot be construed to mean irregular times."[24] Using this reasoning, they concluded that the authority granted in the words "irregular route" was broader and included the authority to operate on both "irregular" and "regular routes."

The problem with this holding is that the carriers and the commission had always interpreted "regular route" and "irregular route" service to be totally distinct concepts. The terms when used by the carriers and by the commision had described operations which were either regular or irregular as to *both time and route.* When the court interpreted these phrases as having a different meaning from that attached to them by the carriers, *i.e.*, by segregating time and route, the effect was to add to the authority given to the carrier under his certificate, leaving the commission with no way of regulating carriers who had only been authorized to carry on "irregular route" operations in the term's original sense. The court also held that the regulation of time of travel by the commission would be an attempt to classify the carriers—a power which was outside the commission's jurisdiction under the court's construction of the statute.

The above illustration shows how a misinterpretation of the actions of the commission and a ruling that a particular order was outside its jurisdiction could have the effect of preventing the exercise of legitimate control over carriers.[25] Had the commission clarified its ruling on the certificate by a finding of facts showing either the activities of the carrier before the issuance of the certificate and the significance of these activities with regard to the authority granted in the certificate, or else a factual finding as to the connotations of the words in the key phrases, this misunderstanding could have been avoided.

Another aspect of review by the court is the test of whether

[24] *Id.* at 655, 7 N.W.2d at 470.

[25] The 1943 legislature passed a statute allowing the commission to classify carriers. Neb. Laws c. 169, § 1 (1943), which is now NEB. REV. STAT. § 75-304 (Reissue 1966). A logical conclusion which can be drawn from this action is that there was some need for such a statute after the *Kassebaum* case, to permit commission control over the times at which carriers were operating. An example of how the court chose to apply the statute to the certificates may be found in Abler Transfer, Inc. v. Lyon, 161 Neb. 378, 73 N.W.2d 667 (1955).

the acts of the commission were arbitrary or unreasonable. A phrase which was used repeatedly in describing operations of a carrier other than those constituting the bulk of his business was the authorization to operate "occasionally to and from various points within the State of Nebraska at Large."[26] This phrase was descriptive of demand operations carried on by the carrier at the time that the "grandfather" clause certificates were issued. A line of cases interpreting this phrase serves further to illustrate why the court cannot properly review action of the commission without the benefit of the facts or reasons underlying the conclusions of the commission It must be kept in mind that under the grandfather clause it is the actual activity before issuance, and not just the words in the certificate which delimit the scope of authority of the carrier. It is easy to see how a decision by the court based solely on the words in the certificate could restrict or expand the authority granted a carrier.

Since most of the business done by the carriers was described to the examiners as "the bulk of their business" on the one hand and "the occassional" or "on demand" segment on the other hand, it is not unreasonable to conclude that the phrase in question, "and occasionally to and from various points within the State of Nebraska at Large," meant the lesser amount of business, done on a call and demand basis at the time of issuance of the certificate.[27] If this were the case, the meaning of the phrase "occasionally to and from various points within the State of Nebraska at Large" would merely mean irregular route operation. The reason for its being set apart from the bulk of the irregular route operation was that this was the way the carriers described their operations to the examiners and the examiners followed this method of description in writing the certificates.

One of the early cases involving the interpretation of that particular phrase was *Meyer v. Nebraska State Ry. Comm'n.*[28] Here the carrier's current operations were between all points in the state and the commission questioned this scope of activity under the language in the certificate, "occasionally to and from various points in all sections of the State of Nebraska." The carrier read this provi-

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[26] This phrase was used, with minor deviations, in many of the certificates of convenience and necessity which were issued under the "grandfather" provisions of the 1937 motor carrier act. A discussion of the reasons for the repeated occurence of this phrase in these certificates may be found *supra.*

[27] This inference is supported by the discussion of the origination of this phrase *supra.*

[28] 150 Neb. 455, 34 N.W.2d 904 (1948).

sion as allowing him to operate anywhere within the state, but the commission interpreted the phrase to limit the carrier's operation to call and demand service either originating or ending in the base area mentioned in the first part of his certificate. The court upheld the interpretation of the certificate by the commission, but in doing so they made a broad statement which, read literally, would not even allow call and demand service from the base point to and from points throughout the state.[29] Since the commission had not ruled that the phrase would not allow such call and demand service, but merely that each trip on the call and demand service must originate or terminate in a base area, the court's statement was unwarranted. Again, had the court had the benefit of more than a conclusion from the commission, they probably would not have made this statement.

In *Canada v. Transit Inc.*[30] the certificate held by the carrier contained substantially the same key words as those in the *Meyer* case. Here the commission had revoked the certificate held by Canada Transport and issued a new one. The court reversed the order because Canada had not shown that present or future public convenience and necessity required the operations authorized in the new certificate. There was reference made to the scope of authority under the first certificate but the court recognized that "it is not proper or necessary to determine what if any significance this language has in the certificate."[31] However, the court went on to magnify further the broad statement made in the *Meyer* case. It quoted that language and stated that the provision " 'and occasionally to and from points within the State of Nebraska at large,' obviously was not intended to authorize common carrier operations to and from all locations in the state."[32] Even though the statement made in *Meyer* was admittedly dictum, the court has strengthened it through this pronouncement and may well have almost precluded call and demand operations to and from points throughout the state under their interpretation of this phrase.

If these words originally authorized call and demand service, the effect of these judicial statements could be to take away legitimate authority granted to carriers by the 1937 motor carrier act.

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[29] "[I]f this court permitted the appellants to haul freight to and from all parts of the state, even occasionally, as they contend their certificate permitted them to do, it would rewrite their certificate so that it would contain no limitation or restriction on the business they could conduct under it." *Id.* at 460, 34 N.W.2d at 906.

[30] 154 Neb. 256, 47 N.W.2d 507 (1951).

[31] *Id.* at 260, 47 N.W.2d at 510.

[32] *Id.* at 260, 47 N.W.2d at 510.

A further muddying of the meaning of the phrase results from dictum in *Nebraska State Ry. Comm'n v. Service Oil Co.*[33] Here the court was concerned with an order of the commission which revoked and cancelled part of the carrier's certificate for willful violation of the commission rules and of the Nebraska Motor Carrier Act. The issue of whether the order was arbitrary or unreasonable turned upon whether the carrier was operating as a regular route carrier when he was only authorized to operate as an irregular route carrier. The court said the finding of willful violation was well grounded. The court at one point cited the *Meyer* and *Canada* cases for the proposition that "whatever occasional irregular permission was given it by the certificate must necessarily mean something less than an unqualified irregular route operation."[34]

The language used in the *Service Oil* case was later discussed in *Abler Transfer, Inc. v. Lyon.*[35] Here the court was concerned with an order of the commission which changed and restricted the authority given the carrier under the "grandfather" clause. The court held that part of the action of the commission was unreasonable and another part of it was not. In doing so, they recognized that the language used by the court in the *Service Oil* case would point to a holding the other way.[36] They then pointed out the proper significance of that case's language by this statement: "In considering certain language used in Nebraska State Railway Commission v. Service Oil Co. . . . it should be remembered that the question here involved was not therein ruled on nor was it necessary to do so in order to determine the issues therein presented."[37] It appears from this statement that the line of cases developing a meaning to the phrase in question has little or no significance to the court at this point. They have recognized the pronouncements as dictum.

A recent case again presented the court with an opportunity to establish the meaning of the phrase. In *Andrews Van Lines, Inc. v. Nielsen & Petersen, Inc.*,[38] the commission had granted an application by Andrews for a certificate of public convenience and necessity which would authorize him to operate on a statewide call and demand basis. Competing carriers appealed from this deter-

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33 157 Neb. 712, 61 N.W.2d 381 (1953).

34 *Id.* at 718, 61 N.W.2d at 385.

35 161 Neb. 378, 73 N.W.2d 667 (1955).

36 The language referred to is the sentence quoted from the *Service Oil* case in the text accompanying note 31 *supra.*

37 161 Neb. 378, 385, 73 N.W.2d 667, 672 (1955).

38 180 Neb. 764, 145 N.W.2d 584 (1966).

mination, maintaining that the commission had acted arbitrarily and unreasonably in granting this certificate. They argued that Andrews had never had the authority to operate on a statewide irregular basis, and that it would be unreasonable to give him such authority, as public convenience and necessity did not justify it. The issue turned on the interpretation of Andrews' original certificate granted under the "grandfather" clause, which gave him the authority to operate "occasionally to and from various points within the State of Nebraska at Large." If these words gave him statewide call and demand authority in the original certificate, then the position of the appellant competitors would have no foundation.

The court presented the problem as follows. Andrews had asked the commission in 1938 whether statewide irregular operation was authorized by his certificate; the commission at that time told him that it was.[39] But the court then said: "[B]y the late 1940's and early 1950's, it was judicially determined in other cases that the words 'and occasionally to and from various points within the State of Nebraska at large' in a certificate did not authorize nonradial irregular route statewide operation."[40] The court is referring to the *Meyer*, *Canada*, and *Service Oil* cases (though they didn't cite them specifically), and it seems that, even though the construction of that phrase was dictum in all of those cases, the court has used that dubious authority to permit the confiscation of part of the rightful scope of operation given to carriers under the "grandfather" clause of the 1937 act. The court, however, did not rule on this basis and instead affirmed the order of the commission on the ground that Andrews had operated under sufficient "color of authority" during this period to keep the action of the commission from being arbitrary or unreasonable.

Thus it seems that the court currently resolves the issue of the meaning of the phrase "occasionally to and from various points within the State of Nebraska at Large" by allowing the commission to interpret it ad hoc in particular cases and then reviewing the cases when necessary through a "color of authority" test.

The significance of this line of cases is not that the court was inconsistent in developing the law on this point, nor that it was necessarily unreasonable in its interpretations of the phrase. The

[39] Note that these facts support the earlier conclusion that the interpretation placed on the phrase by the commission and the carriers was that it meant call and demand service. If this is the proper meaning of the phrase, the commission would not be arbitrary and unreasonable in holding the way they did.

[40] Andrews Van Lines, Inc. v. Nielsen & Petersen, Inc., 180 Neb. 764, 765, 145 N.W.2d 584, 586 (1966).

point is that the court had no way of knowing whether the action of the commission was arbitrary or unreasonable when all they had was a conclusionary finding to review. Had the commission provided the court with some findings of fact or statements of reasoning in addition to their conclusions, this problem probably would never have existed. Undoubtedly there are many other specific examples of unclear or inequitable situations which have arisen due to the lack of a record of the administrative agencies' deliberations.

There is a substantial portion of the economy of Nebraska involved in the activities controlled by the railway commission. In addition, the nature of the power of the commission requires effective control by the court within its scope of review. These factors all lead to the conclusion that some way must be established to require the commission to report the facts and the reasons for its conclusions.

III. SOLUTION

Action should be taken which would require the Nebraska State Railway Commission to write and report findings of fact or reasoning which support their conclusionary orders. Although the scope of the problems presented here are limited, some of the solutions posed could affect all the administrative agencies in the state. One alternative is for the legislature to enact a State Administrative Procedure Act. If this were done the legislature could properly consider whether to include or exclude from the act any particular administrative agency.

The requirements for federal administrative agencies as to the sufficiency of their findings provides one model for consideration:

> The accepted ideal, as stated by the Supreme Court, is that "the orderly functioning of the process of review requires that the grounds upon which that admistrative agency acted be clearly disclosed and adequately sustained.[41]
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> In adjudication-type hearings governed by the Federal Administrative Procedure Act, all decisions are required to include a statement of findings and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law, or discretion presented on the record.[42]

Looking at these rules, it would seem that the records required of the federal administrative agencies are as complete as those customarily expected from courts. In some instances, these agencies

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[41] K. DAVIS, ADMINISTRATIVE LAW TEXT § 16.01 (1959).

[42] 2 AM. JUR. 2d *Administrative Law* § 455 (1962).

are required to give much more specific reasons and findings of fact than trial courts usually do.[43]

It would seem that control of state administrative agencies would not need to be as stringent, and as a general rule most states do not have such specific requirements as to the sufficiency of the findings and orders. One writer, in referring to state administrative procedure acts, stated that "a common requirement in all the acts is that decisions adverse to a party to the proceeding in a contested case shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be delivered to each party."[44] But he goes on to say that even in the states which have these requirements only "occasionally, agency decisions have been rejected for failure to observe these standards."[45]

The best reasons for requiring findings is that they are necessary for judicial review and that they aid the agency in its decision making process.[46] The requirements concerning administrative findings, whether in state or federal situations, are usually based on court decisions in reviewing administrative action which is later codified into legislative requrements.

As a practical matter, there are two ways in which the commission could be required to publish more than mere conclusionary findings. One way is for the Nebraska Supreme Court to remand cases that come before it from the commission and require some findings of fact which are the basis for the conclusions, before they will hear the case. Another way is for the legislature to enact a state administrative procedure act which would require some detailed findings.[47]

Most of the decisions involving findings of an administrative agency test the specificity of these findings under a statutory requirement.[48] However, the court would not be acting without

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[43] The cases discussing these ideals are Securities Exch. Comm'n v. Chenery Corp., 332 U.S. 194 (1947), and Securities Exch. Comm'n v. Chenery Corp., 318 U.S. 80 (1943).

[44] F. HEADY, ADMINISTRATIVE PROCEDURE LEGISLATION IN THE STATES 88 (1952).

[45] *Id.*

[46] See 2 F. COOPER, STATE ADMINISTRATIVE LAW 465-68 (1965), for a general discussion of these reasons.

[47] A good example of a provision which would set up this requirement is the Model State Administrative Procedure Act § 12. A full copy of this act as amended may be found in the NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 260 (1961).

[48] See 2 F. COOPER, STATE ADMINISTRATIVE LAW 472 (1965).

precedent if it were to require findings by the commission as a matter of procedural due process.[49] One rationale is that a court cannot decide rationally whether the decision of an agency follows from the facts as a matter of law, or whether these facts are supported by the evidence unless the findings themselves are revealed. A determination of arbitrariness or unreasonableness by definition would require that the court be able to determine the commission's reasons for their conclusion. Another ground for requiring findings as a matter of procedural due process is the need to inform the parties. And, as one court has said, this can be a means of guaranteeing that the decisions of an agency will be decided according to the evidence and the law.[50] Considering the specific examples shown in this article and the fact that a court could render such inconsistent, contradictory, and confusing decisions as in the carriers' cases, it would seem that in nearly all cases reviewed from the commission, the court would be justified as a matter of procedural due process in requiring findings of fact.

As was noted above, a pressing reason for the commission reporting findings of fact along with its conclusions is to effectively notify the carriers throughout the state. Unless the carriers have that same information that the court needs for review, it is hard to see how they could be expected to properly conform their actions to commission requirements. For the sake of uniformity and certainty, then, the better way to solve the problem may be to require, by legislative directive, a record of facts or reasons underlying the conclusions of the commission.

Section twelve of the Model State Administrative Procedure Act provides that: "A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings."[51] A number of states have adopted this specific language and others have reached the same result by a similar statutory requirement.[52]

IV. CONCLUSION

Undoubtedly the Nebraska State Railway Commission has a difficult responsibility in handling the matters under its jurisdic-

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[49] *Id.* at 471 nn. 120 & 121.

[50] Saginaw Broadcasting Co. v. Federal Communications Comm'n, 96 F.2d 554, 559 (D.C. Cir. 1938).

[51] NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *supra* note 47 at 217-18.

[52] 2 F. COOPER, STATE ADMINISTRATIVE LAW 470 (1965).

tion, but there is a lack of administrative justice under their present procedure. It is submitted that proper procedural guidelines are missing in administrative law in our state and something should be done about it.

Nebraska should have a reasonable and practicable standard of administrative procedure to guide administrative agencies. This standard could be established in part by judicial action, but by far the best solution is for the legislature to enact an administrative procedure act to ensure a proper code of standards.

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